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No. 71-463

Supreme Court, U.S.
FILED
SEP 13 1971
E. ROBERT SEAVER, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH M. KADANS,

Appellant

VS.

JON R. COLLINS, CAMERON BATJER, GORDON THOMPSON, DAVID ZENOFF, JOHN MOWBRAY, as members of the NEVADA SUPREME COURT,

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS (9th CIRCUIT)

Joseph M. Kadans, Esq., Attorney at Law
Attorney for Appellant
In Proper Person
3519 Thom Blvd.
Las Vegas, Nevada 89106

JURISDICTIONAL STATEMENT

No. _____

IN THE SUPREME COURT OF THE
UNITED STATES

_____,

Petitioner,

vs.

_____,

Respondent.

PETITION FOR WRIT OF CERTIORARI

_____

Petitioner prays that a writ of certiorari issue to review the judgment of the _____ Court of _____ entered on the _____ day of _____, 19__.

_____

Petitioner

_____

Attorney for Petitioner

_____

Address

_____

Telephone

IN THE UNITED STATES SUPREME COURT

JOSEPH M. KADANS)

Appellant)

vs.)

JON R. COLLINS, CAMERON)

BATJER, GORDON THOMPSON,)

DAVID ZENOFF, JOHN MOWBRAY,)

as members of the NEVADA)

SUPREME COURT,)

Appellees)

JURISDICTIONAL STATEMENT

1. NOW comes JOSEPH M. KADANS, Attorney at Law and member of the bars of the States of Maryland and Michigan and of the United States Supreme Court as well as various U.S. Courts of Appeals and U.S. District Courts and files this Jurisdictional Statement on behalf of Appellant in the above entitled cause, in compliance with Rule 15 of the Rules of the Supreme Court of the United States.

2. Report of opinions. The only opinion necessary to understand the grounds of the appeal is the opinion of United States District Court Judge Roger D. Foley on August 5, 1970, a copy of the Opinion being appended hereto. The U.S. Court of Appeals, in Case No. 26,522, on May 12, 1971 affirmed the lower court opinion in a per curiam decision: "The case is affirmed on the authority of our Hackin v. Lockwood, 9 Cir., 361 F2d 499."

3. Nature of proceeding and applicable statutes: A Complaint was filed in the United States District Court for the District of Nevada on December 31, 1969 asking for a declaration of rights under the U.S. Code, Title 28, Sec. 2201, the plaintiff, a lawyer of many years of good standing in the Bars of Maryland, Michigan and the U.S. Supreme Court, the author of PRINCIPLES OF MARITIME LAW and other text-books of law, on the recommended list of the Association of American Law Schools and formerly on the faculty of the Law School of Loyola University of Los Angeles, a fully approved law school, having been denied the right to take the Nevada State Bar Examination.

By this suit, appellant sought to test the validity of a Nevada Supreme Court Rule, 51(6), which bars the plaintiff from the examination. In addition to asking for a declaration of rights, the plaintiff sought an injunction to restrain the defendants (appellees) herein from barring the plaintiff from taking the annual Nevada State Bar examination, now scheduled for 1971 for the three day period starting Monday, Sept. 20, 1971.

Prior to taking this legal action to compel the State of Nevada to admit him to the Nevada Bar examination, plaintiff had practiced law continually since 1943, when he was first admitted to the Bar (of Maryland).

The case, therefore, falls within the nature of a case seeking declaratory and injunctive relief and thus the case falls within the statute requiring the calling of a three-judge court, the appellant having alleged and now alleging violation of the Fourteenth Amendment by the defendants (appellees) herein.

Without requiring an answer to be filed, and without requiring the convening of a three-judge court, the

3. Nature of proceeding and applicable statutes: A Complaint was filed in the United States District Court for the District of Nevada on December 31, 1969 asking for a declaration of rights under the U.S. Code, Title 28, Section 2201, the plaintiff, a lawyer of many years of good standing in the Bars of Maryland, Michigan and the U.S. Supreme Court, the author of PRINCIPLES OF MARITIME LAW and other text-books of law, on the recommended list of the Association of American Law Schools and formerly on the faculty of the Law School of Loyola University of Los Angeles, a fully approved law school, having been denied the right to take the Nevada State Bar Examination.

By this suit, appellant sought to test the validity of a Nevada Supreme Court Rule, 51(3), which bars the plaintiff from the examination. In addition to asking for a declaration of rights, the plaintiff sought an injunction to restrain the defendants (appellees) herein from barring the plaintiff from taking the annual Nevada State Bar examination, now scheduled for 1971 for the three-day period starting Monday, Sept. 27, 1971.

Prior to taking this legal action to compel the State of Nevada to admit him to the Nevada Bar examination, plaintiff had practiced law continually since 1953, when he was first admitted to the Bar (of Maryland).

The case, therefore, falls within the nature of a case seeking declaratory and injunctive relief and thus the case falls within the statute requiring the calling of a three-judge court, the appellant having alleged and now alleging violation of the Fourteenth Amendment by the defendants (appellees) herein.

Without requiring an answer to be filed, and without requiring the convening of a three-judge court, the

District Judge, sitting as a single judge, decided the merits of the case and denied any relief. His action was affirmed by the U.S. Court of Appeals.

The nature of the case is such that many thousands of lawyers who may wish to move from one state to another are affected by this case. In addition, many citizens may be deprived of qualified attorneys of their own choosing if the decision of the lower court is allowed to stand, barring a highly qualified attorney from taking the State bar examination so he may demonstrate his qualifications to practice law in Nevada.

All of the necessary prerequisites for a three-judge court are present in this case.

Dates of judgment, petition for rehearing and notice of appeal. The judgment of the U.S. Court of Appeals sought to be reviewed is dated May 12, 1971 with a provision that "the mandate will issue 21 days from today" if no petition for rehearing is filed. A petition for rehearing was mailed to the Clerk of that Court on May 24, 1971. The rehearing petition was denied on June 23, 1971. The Notice of Appeal to the U. S. Supreme Court was mailed to the Clerk of the U. S. Court of Appeals for the Ninth Circuit on August 22, 1971.

5. Statute allowing jurisdiction of appeal. Inasmuch as under Title 28, sec. 1253 "any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by an Act of Congress to be heard and determined by a district court of three judges," and inasmuch as the case at bar is a case that is required to be heard and determined by a district court of three judges, the Supreme Court has jurisdiction to hear this appeal. Appellant had applied for an injunction in a case requiring three

judges. The district court judge failed to call for three judges, denied injunctive relief and decided the case on the merits, all without requiring an answer to be filed. On appeal to the U.S. Court of Appeals (9th) the action of the district court was affirmed.

The clear statutory right to an appeal to the Supreme Court is not abrogated merely by a district court judge failing to convene three judges nor is this statutory right lost by first taking an appeal to the U. S. Court of Appeals.

6. Cases believing to sustain the jurisdiction. Loeb v. Trustees, 17 U.S. 472, 45 L ed 280; Fidelity v. Mettler, 185 U.S. 308, 46 L ed 922. Palmetto Fire Ins. Co. v. Conn. 272 U.S. 295; 71 L ed 243; Van Dyke v. Geary, 244 U.S. 39, 69 61 L ed 973

7. Invalid statute or order of Agency of State:

Nevada Revised Statutes, Supreme Court Rules:

Rule 51(6):
" * * * an applicant for examination for a license to practice as an attorney and counselor at law in this state shall:
* * * * * *
"Present sufficient evidence to establish to the satisfaction of the court that he has * * * Received a degree of bachelor of laws, or its equivalent, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association."

8. Questions presented by the appeal.

A. May a U.S. District Court Judge re-write an Act of Congress requiring a three-judge court so that instead of

judges. The district court judge failed to call for three judges, denied injunctive relief and decided the case on the merits, all without requiring an answer to be filed. On appeal to the U.S. Court of Appeals (5th) the action of the district court was affirmed.

The Supreme Court is not absolutely bound by stare decisis but is not always willing to overrule its precedents. Cases deciding to sustain the jurisdiction: Idaho v. Texas, 11 U.S. 412, 45 L ed 258; Pulmeter v. Nebraska, 166 U.S. 303, 41 L ed 1132. Cases declining to sustain the jurisdiction: Van Dyke v. Geary, 244 U.S. 39, 61 L ed 973

If Howard Stern, or other of Ayers, Clinton's

a * * an applicant for examination for a

* * * *

calling for a three-judge court as required by law decide the case on the merits himself?

Appellant believes this question should be answered in the negative; appellees believe it should be answered affirmatively.

B. May a U.S. District Court judge ignore decisions of the United States Supreme Court that control a case and instead select a lower court case as his guide that has no relevancy to his decision?

Appellant believes this question should be answered in the negative; appellees believe it should be answered affirmatively.

9. Statement of the case. Briefly, the facts are that a lawyer of unquestioned high character and of undoubted high learning in the law with many years (19) of actual practice of law in such cities as Baltimore, Maryland and Detroit, Michigan, handling several hundred cases in the state and federal courts of those jurisdictions, and who has written several law books (Elements of Insurance; Principles of Maritime Law; The Law of International Trade; Federal Administrative and Court Procedure), and who has taught in two law schools (one accredited by the State of Maryland as an accredited law school and another accredited by the American Bar Association as a fully accredited law school) and who has addressed lawyer groups throughout the United States as an authority on admiralty law and federal procedure, has been denied admission to the Nevada Bar Examination because the lawyer's law school (University of Baltimore, Baltimore, Maryland) although fully accredited by the State of Maryland is not on the approved list of law schools of the American Bar Association.

calling for a three-judge court as required by law decide the case on the merits himself?

Appellant believes this question should be answered in the negative, appellee believes it should be answered affirmatively.

5. May a U.S. District Court judge ignore decisions of the United States Supreme Court and control a case and thereby defeat a lower court case as he finds that his relevancy to its decision?

Appellant believes this question should be answered in the negative, appellee believes it should be answered affirmatively.

6. Disbarment of the case. Briefly, the facts are that a lawyer of good character and reputation in the community in which he resides, after practicing law in the state and federal courts of those jurisdictions, and who has written several law books (Elements of Insurance, Principles of Maritime Law; The Law of International Trade, Federal Administrative and Court Procedure), and who has taught in two law schools (one accredited by the state of Maryland as an accredited law school and another accredited by the American Bar Association as a fully accredited law school) and who has successfully argued cases throughout the United States as an authority on admiralty law and federal procedure, has been denied admission to the Nevada Bar Examination because the lawyer's law school (University of Baltimore, Baltimore, Maryland) although fully accredited by the State of Maryland is not on the approved list of law schools of the American Bar Association.

is
The case/of transcending public importance, many lawyers throughout the United States and a number of eminent jurists having learned law other than by attending law schools approved by the American Bar Association. For many years, many lawyers have studied law in law offices, have been admitted to the practice of law prior to adoption of state laws requiring attendance at ABA-approved law schools (as in the case at bar) and a number of lawyers have studied law through home-study of law books and thereby obtaining sufficient learning in the law to pass state bar examinations.

This type of overbroad rule (as exists in the State of Nevada) tends to restrict free movement of lawyers wishing to change residence from one state to another and are thus prevented from pursuing their occupations when they move from one part of a country to another.

The rule has no demonstrable relationship as a reasonable measure of job performance. The Supreme Court has ruled in Schware v. Board of Bar Examiners, 353 U.S. 232, 1 Led 2 796 that "any qualification must have a rational connection with the applicant's fitness or capacity to practice law."

In the recent case of Griggs v. Duke Power Co., 28 L ed 2d ____, it was held by the Supreme Court that the requirement of high school graduation was an improper job requirement and the 4th Circuit was reversed. Likewise, graduation from an ABA approved law school is an improper requirement, especially when the rule bars from the state bar examination an eminent lawyer of great skill in the law. Such a rule not only constitutes an onerous restriction of an impermissible character but, in addition, not only fails to serve the public interest but actually deprives citizens of the right to

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select eminent and highly qualified attorneys residing in their areas but prevented from practicing law not by a board of laymen or even the state legislature but by members of their own profession already established in the profession either as lawyers or judges.

" *** no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws." This quotation from Ex parte Virginia, 100 US 339, 25 L ed 676 was cited in Cooper v. Aaron, 358 U.S. 1, 3 L ed 2d 5, 16 the Supreme Court holding:

> "Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action."

Thus, a State may not avoid the consequences of adoption of an onerous requirement in connection with carrying on one's vocation in that state by arranging for a professional group to set forth the onerous requirement rather than setting forth the requirement as part of a state statute. The Congress has wisely provided that overbroad requirements as to job qualifications are State requirements whether imposed by state statute or by a State agency. The judicial branch of state government is part of the state agency structure.

While the law school requirement in Nevada, applied equally to fresh law school graduates as well as to seasoned lawyers and jurists of many years of high standing at the bar in other states may deny bar admission to some applicants who lack competence, it also bars, arbitrarily and capriciously, applicants who are eminently qualified for admission.

eminently qualified for admission.

In the carefully reasoned opinion of Circuit Judge Craven in Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (1970), a three-judge district court held that a bar admission rule was unconstitutional "because it creates an unreasonable, arbitrary classification, unnecessarily burdens the plaintiffs' right to travel, and arbitrarily denies the plaintiffs an opportunity to practice their profession."

The decision found the Board of Law Examiners to be an administrative agency with both judicial and delegated legislative powers, as it is the rule-making body in North Carolina. In Nevada, the rule-making is exclusively within the province of the Nevada Supreme Court and therefore it is reasonable to assume that in Nevada, the Supreme Court in making rules for admission to the Bar, acts as an administrative agency with both judicial and delegated legislative powers.

Statutory jurisdiction is also claimed in the case at bar, as in the Keenan Case, supra, by virtue of 28 USC 1343(3) and it is believed that in the case at bar, as in the Keenan Case "federal district courts have jurisdiction under 28 USC 1343 to consider claims arising out of the application by state officials of a general bar admission requirement that is alleged to be unconstitutional on its face."

It is carefully pointed out in the Keenan Case, supra, that although federal courts may decline jurisdiction in disciplinary cases, the "hands off" doctrine "is inapplicable to Fourteenth Amendment claims with respect to admission to practice, and that state court preemption is probably limited to disciplinary proceedings not involving constitutional questions."

The district court has clearly abused its

discretion by arbitrarily and capriciously denying to appellant his clear right to a three-judge court.

A state law or regulation applicable to the right to carry on in one's profession that has "no rational connection between premise and conclusion" (Wheeler v. Goodman, 306 F. Supp. 58, W. D. N. C. 1969) has a constitutional infirmity known as over-inclusion. (Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497, 1966 and Carrington v. Rash, 380 U.S. 89, 85 S. Ct. 775, 1915)

The rule or standard adopted by the State of Nevada preventing lawyers from moving to Nevada to practice their profession unless graduates of ABA-approved law schools, regardless of the length of years of practice or recognized and established proficiency in the law is an impermissible onerous restriction, a term borrowed from the case of Webster v. Wofford, 321 F. Supp. 1259, 1970 wherein a three-judge federal district court struck down an onerous bar admission rule.

Just as in the Webster Case, supra, the Court declared that the state rule discriminated against a class of bar applicants, so in the case at bar does the state rule in Nevada discriminate against bar applicants of long standing at the bars of sister states who met all requirements of the sister states but are unable to meet the overly-strict Nevada requirements, thus being deprived of the right to practice their profession and, in fact, the right to travel and reside in Nevada. (So held in the Keenan Case, supra)

Respectfully submitted,

Joseph M. Kadans
Attorney At Law - In pro per
3519 Thom Blvd.
Las Vegas, Nev. 89106

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JOSEPH M. KADANS
Plaintiff
vs.

JON R. COLLINS, CAMERON BATJER, GORDON THOMPSON, DAVID ZENOFF, JOHN MOWBRAY, as members of the NEVADA SUPREME COURT
Defendants

CIVIL NO. LV-1374

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Plaintiff brings this action against the individual Justices of the Nevada Supreme Court. He contends that Rule 51(6) of the Nevada Supreme Court Rules, which provides: "An applicant for examination for a license to practice as an attorney and counselor at law in this state shall:
" * * * 6. Have received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association, and shall present evidence of the same."

is unconstitutional under the Fourteenth Amendment to the Constitution of the United States in that as applied to his case, the rule deprives him of his property right to practice law without due process of law and denies him equal protection of the law.

This is the second action that the plaintiff has commenced in this court arising out of his

APPENDIX A

being precluded from taking the Nevada bar examination. In the former case, Kadans v. Dickerson, et al., Civil No. 665, this Court found that plaintiff was first licensed to practice law in the State of Maryland in 1943 following his graduation from the University of Baltimore School of Law, a law school not accredited at the time of his graduation as required by Nevada Supreme Court Rule 51(6).

This Court's jurisdiction is not specifically alleged as it should have been. However, when viewed in its entirety it may be said that the complaint does allege that plaintiff is being deprived under color of state law of privileges and immunities secured by the Constitution of the United States under 28 U.S.C. sec. 1343(3).

A three-judge court is not required. Plaintiff does not contend that any state statute is unconstitutional. He does not attack NRS 2.120 authorizing the Supreme Court to make its own rules governing the state bar, but attacks only the rule itself.

The complaint must be dismissed; it does not state facts upon which relief can be granted in the federal court. See Hacklin v. Lockwood (9th Cir. 1966), 361 Fed. 2d 499; Henington v. State Board of Bar Examiners (New Mex. 1956), 291 Pac. 2d 1108; In re Lorring (Nev. 1959), 340 Pac. 2d 589; Petition of Batten (Nev. 1967), 428 Pac. 2d 195.

Rule 51(6), as applied to plaintiff and to others older attorneys admitted elsewhere who completed their legal education in unaccredited law schools years before Rule 51(6) was adopted in Nevada in 1951, is not arbitrary, capricious or unreasonable and the rule does not deprive plaintiff of property right without due process of law.

The Nelson case, discussed in the brief and oral argument, does not make out a case of denial of equal protection of the law. Both Lorring, before Nelson, and Batten, after Nelson, were treated in the same manner as plaintiff.

The motion to dismiss is granted.

DATED: August 5, 1970. ROGER D. FOLEY
District Judge.

CERTIFICATE OF SERVICE

The undersigned, JOSEPH M. KADANS, a member of the bar of the United States Supreme Court and of the States of Maryland and Michigan, does hereby certify 3 copies of the foregoing Jurisdictional Statement were mailed on Sept. 10th 1971 to the following:

Jon R. Collins, Esq., 302 E. Carson, Las Vegas, Nev.
Hon. David Zenoff, Supreme Court, Carson City, Nev.
Hon. John Mowbray, Supreme Court, Carson City, Nev.
Hon. Cameron Batjer, Supreme Court, Carson City, Nev.
Hon. Gordon Thompson, Supreme Court, Carson City, Nev.
Hon. E. M. Gunderson, Supreme Court, Carson City, Nev.
Robert R. Herz, Esq., P. O. Box 2125, Reno, Nev. 89505
Howard L. Cunningham, Esq. 102 Roff Way, Reno, Nev. 89501

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SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-463

JOSEPH M. KADANS, *Appellant,*

v.

JON R. COLLINS, ET AL., as members of the Nevada Supreme Court

---

Appeal from the United States Court of Appeals for the Ninth Circuit

---

MOTION TO DISMISS APPEAL FOR WANT OF JURISDICTION AND BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI

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INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitutional and statutory provisions involved	2
Statement	4
Argument	5
I. The appeal must be dismissed for want of jurisdiction	5
II. Treating the appeal papers as a petition for a writ of certiorari, certiorari should be denied	7
Conclusion	12

AUTHORITIES

CASES:

El Paso v. *Simmons*, 379 U.S. 497	7
F.T.C. v. *Mandel Brothers*, 359 U.S. 385	6
Hackin v. *Lockwood*, 361 F. 2d 499, certiorari denied, 385 U.S. 960	5, 8
Keenan v. *Board of Law Examiners*, 317 F. Supp. 1350	11
Lathrop v. *Donohue*, 367 U.S. 820	5
Law Students Research Council v. *Wadmond*, 401 U.S. 154	10
Maguire v. *Commissioner*, 313 U.S. 1	6
Mengelkoch v. *Welfare Comm'n.*, 393 U.S. 83	6
Quaker City Cab Co. v. *Pennsylvania*, 277 U.S. 389	9
Schackman v. *Arnebergh*, 387 U.S. 427	6
Schware v. *Board of Bar Examiners*, 353 U.S. 232	7
Truax v. *Corrigan*, 257 U.S. 312	11
Webster v. *Wofford*, 321 F. Supp. 1259	11
Wilson v. *Port Lavaca*, 391 U.S. 352	6

Page

CONSTITUTIONAL PROVISIONS:

Fourteenth Amendment 2, 4, 12

Section 1 2

Due Process Clause 4

Equal Protection Clause 4

STATUTES:

Nevada Statute:

Nevada Revised Statutes, § 2.120 5

United States Statutes:

28 U.S.C. § 1253 ..... 2, 6

28 U.S.C. § 1254(2) 3, 5, 6

28 U.S.C. § 1257(2) 5

28 U.S.C. § 2101(c) 7

28 U.S.C. § 2103, as amended 1, 3, 7, 12

MISCELLANEOUS:

Nevada Supreme Court Rule 51(6) 4, 5, 6, 10, 11

1970 Review of Legal Education, pp. 50-54 9

United States Supreme Court Rule 5 10

IN THE

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JOSEPH M. KADANS, *Appellant*,

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---

Appeal from the United States Court of Appeals for the Ninth Circuit

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MOTION TO DISMISS APPEAL FOR WANT OF JURISDICTION AND BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI

JON R. COLLINS *et al.*, members of the Nevada Supreme Court and appellees herein, move to dismiss the appeal for want of jurisdiction, and, treating the appeal as a petition for certiorari as now required by 28 U.S.C. § 2103, submit that certiorari should be denied.

OPINIONS BELOW

The opinion of the district court (J. S., App. A) is not reported. The memorandum opinion of the court of appeals (J.S. 1) is reported at 441 F.2d 657.

JURISDICTION

The judgment of the court of appeals was entered on May 12, 1971. A timely petition for rehearing was denied on June 23, 1971. A notice of appeal to this Court was mailed to the clerk of the court below on August 22, 1971 (J. S. 3), and the case was docketed here on September 13, 1971. The jurisdiction of this Court is invoked, see J. S. 3, under 28 U.S.C. § 1253.

QUESTIONS PRESENTED

1. Whether this Court has jurisdiction on appeal to review a judgment rendered by a United States court of appeals that did not hold any state statute to be invalid as repugnant to the Constitution, treaties or laws of the United States, but to the contrary sustained its validity.

2. Whether a state may, consistently with the Constitution of the United States, require as a prerequisite to taking its bar examination that the applicant shall have received a degree from a law school that has been approved by the Committee on Legal Education of the American Bar Association.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 1 of the Fourteenth Amendment is sufficiently familiar to the Court as not to require quotation.

2. Section 1253 of Title 28, United States Code, provides as follows:

> **"§ 1253. Direct appeals from decisions of three-judge courts**
>
> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order

granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

3. Section 1254(2) of Title 28, United States Code, provides in pertinent part as follows:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

* * * * *

"(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented."

4. Section 2103 of Title 28, United States Code, as amended in 1962, provides as follows:

"§ 2103. Appeal from State court or from a United States court of appeals improvidently taken regarded as petition for writ of certiorari

"If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State, or of a United States court of appeals, in a case where the proper mode of a review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken. Where in such a case there appears to be no reasonable ground for granting a petition for writ of certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs."

5. Rule 51(6) of the Nevada Supreme Court Rules, provides as follows:

> "An applicant for examination for a license to practice as an attorney and counselor at law in this state shall: * * *
>
> "6. Have received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association, and shall present evidence of the same."

STATEMENT

The appellant Kadans alleges that he is a member of the bar in good standing in Maryland and Michigan; that he has been admitted to practice in three United States courts of appeals and in this Court; that he is the author of a number of legal texts and has taught law; and that he "considers that he falls within the dictionary definition of a jurist" (Cmplt., ¶¶ 2-4).

He complains that, since he is unable by reason of Rule 51(6) of the Nevada Supreme Court, just quoted, to take the Nevada bar examination, he is being "deprived of the privilege of practicing his profession," to his damage in excess of $10,000 (*id.*, ¶ 7); and he alleges that Rule 51(6) is unconstitutional in violation of both the due process and the equal protection clauses of the Fourteenth Amendment because it is arbitrary and unjust (*id.*, ¶ 6).

The appellant Kadans accordingly prayed for declaratory and injunctive relief and asked that a district court of three judges be convened to consider his constitutional challenge.

The district judge refused to convene a three-judge court because no state statute was alleged to be uncon-

stitutional, and on the merits dismissed the complaint for failure to state facts on which relief could be granted (J.S., App. A).

On appeal, the court below affirmed *per curiam* on the basis of its own prior ruling in *Hackin* v. *Lockwood,* 361 F.2d 499, certiorari denied, 385 U.S. 960 (No. 577, O.T. 1966); that decision sustained a substantially identical rule promulgated by the Supreme Court of Arizona, which also required graduation from an A.B.A.-approved law school as a prerequisite to taking the bar examination.

Following denial of rehearing, the appellant Kadans noted an appeal to this Court, and simultaneously sought, in a companion case (No. 71-464), mandamus against the district judge and against the chief judge of the circuit because of their failure to convene a three-judge court.

A separate brief in opposition is being filed in No. 71-464.

ARGUMENT

I. THE APPEAL MUST BE DISMISSED FOR WANT OF JURISDICTION

Inasmuch as the Nevada Supreme Court Rule that is in question had the force of law, having been enacted pursuant to a statute empowering that court to make its own rules governing the State Bar (Nevada Revised Statutes, § 2.120), Rule 51(6) constitutes a "State statute" within the meaning of 28 U.S.C. § 1254(2) because it was legislative in nature. See *Lathrop* v. *Donohue,* 367 U.S. 820, 824-827, which is conclusive on that point. True, the *Lathrop* case construed 28 U.S.C. § 1257(2), dealing with appeals from state courts, but surely the

meaning of "a State statute" for purposes of this Court's appellate jurisdiction is not varied by the happenstance of whether the appeal sought to be lodged here is taken from a state court of last resort or from a United States court of appeals.

Consequently, since Nevada Supreme Court Rule 51(6) constitutes a state statute for purposes of review by this Court, the contrary reasoning of the district court on that issue (J. S. App. A) cannot be supported.

But—an appeal from a United States court of appeals under 28 U.S.C. § 1254(2) lies only when the state statute has been held "invalid as repugnant to the Constitution, treaties, or laws of the United States." The terms of the cited provision are perfectly clear, from which it necessarily follows that, since here the state enactment was sustained, Kadans' appeal from the Ninth Circuit's judgment must be dismissed for the want of jurisdiction.

It is perhaps unnecessary to add that the jurisdictional provision invoked by Kadans, 28 U.S.C. § 1253, see J.S. 3, is wholly unavailing; that concerns only "Direct appeals from decisions of three-judge courts." The title dispels any ambiguity lurking in the language of the text, "in any civil action * * * required by any Act of Congress to be heard and determined by a district court of three judges," see *Maguire* v. *Commissioner*, 313 U.S. 1, 9-10; *F.T.C.* v. *Mandel Brothers*, 359 U.S. 385, 388-389, and the settled practice here establishes beyond question that, since the case was not in fact heard below by a district court of three judges, a direct appeal to this Court will not lie. *Mengelkoch* v. *Welfare Comm'n.*, 393 U.S. 83; *Wilson* v. *Port Lavaca*, 391 U.S. 352; *Schackman* v. *Arnebergh*, 387 U.S. 427.

II. TREATING THE APPEAL PAPERS AS A PETITION FOR A WRIT OF CERTIORARI. CERTIORARI SHOULD BE DENIED

What we have just said, however, is not fatal to consideration of Kadans' application for review, because, by reason of the 1962 amendment to 28 U.S.C. § 2103 (*supra*, p. 3), an appeal "improvidently taken from the decision * * * of a United States court of appeals, in a case where the proper mode of a review is by petition for certiorari * * * shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken"; see *El Paso* v. *Simmons*, 379 U.S. 497, 501-503. Therefore, treating the appeal as a petition for certiorari, it is timely because filed within 90 days of the denial of rehearing below. 28 U.S.C. § 2101(c).

On the merits, however, certiorari should be denied, as the substantive question presented does not warrant further review.

First. This Court said in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 239:

> "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to pracice law. * * * Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory."

What the court below said in its earlier decision regarding Arizona, and on which it rested its ruling

here, deserves quotation (*Hackin* v. *Lockwood,* 361 F. 2d 499, 503-404; footnotes omitted):

> "In determining whether Arizona's educational requirement is arbitrary, the fact that Abraham Lincoln and Dean Roscoe Pound had no, or little, formal legal schooling is interesting, but not conclusive. * * *
>
> "Roscoe Pound (the example named by appellant herein as one without *formal* legal education) was himself a member of the 1913 Committee of the American Bar Association that induced the Carnegie Foundation to survey all the law schools of this country, and to evaluate the matter of admission to the bar in the various states of the entire country. Published early in 1921, it had a tremendous effect on the adoption of the American Bar Association's accreditation rule, adopted later in 1921. This was approved by the Association of American Law Schools. In urging its adoption, the Honorable Elihu Root described the vast complications of the then statutory enactments (increased many fold since 1921) as 'a wilderness of laws and a wilderness of adjudications that no man can follow—[which] require not less but more ability; not less but more learning; not less but more intellectual training in order to advise an honest man as to what his rights are and in order to get his rights for him.'
>
> * * * * *
>
> "But whatever the various states, in their respective wisdom, may require before allowing the taking of bar examinations—so long as they are applicable to every citizen alike, it should be of no concern to the federal courts."

This Court thereafter denied review, 385 U.S. 960 (No. 577, O.T. 1966), and certainly nothing since then has added the slightest substance to the contention that

requiring graduation from an approved law school as a prerequisite to taking the bar examination transcends constitutional limitations.

Second. Nor does Kadans' position gain stature on reappraisal.

In requiring graduation from a law school that has been approved by the Committee on (now actually Section of) Legal Education of the American Bar Association as a prerequisite even to taking the bar examination, Nevada does not stand alone. For the fact is that most states require graduation from an approved law school, some from those approved by the American Bar Association, some from those approved by the American Association of Law Schools, some from those approved by the highest state court; some states accept alternatives. See *1970 Review of Legal Education,* published by the Section of Legal Education and Admissions to the Bar of the A.B.A., at pp. 50-54.

No less than 17 states—Alaska, Arkansas, Idaho, Illinois, Indiana, Louisiana, Maine, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, West Virginia, and Wisconsin—do not permit any alternative to their requirement of graduation from an A.B.A.-approved law school.

"We call that action reasonable," said Mr. Justice Brandeis in *Quaker City Cab Co.* v. *Pennsylvania,* 277 U.S. 389, 403, 406, "which an informed, intelligent, just-minded, civilized man could rationally favor."

Accordingly, there is nothing even remotely unreasonable in the preference of a third of the fifty states for a bar examination applicant who has graduated from a law school that meets the requirements imposed

by an informed body of the legal profession—a body, it should be noted, that has never sought to limit the number of those desiring to enter its ranks, but, to the contrary, has assiduously labored over many decades to enhance the educational qualifications required of persons who undertake the responsibility of protecting a client's confidences, aspirations, property, means of livelihood, freedom, and, it may be, his very life.

Nothing in the Constitution restricts a state from establishing qualifications for admission to its bar, or for admission to an examination for such admission, that, as here, are reasonable; that, as here, are relevant to a high standard of professional attainment; and that, as here, are required of all applicants. It is possible that alternative requirements might reflect a wiser policy. But Nevada, along with 16 other states, "has made its choice. To disturb it would be beyond the power of this Court." *Law Students Research Council* v. *Wadmond,* 401 U.S. 154, 167. And of course there is not the slightest suggestion in the present appeal papers that Nevada has displayed any interest whatever in Kadans' associational ties.

It could conceivably be objected that reliance on any outside group's appraisal and approval involves an inescapable degree of delegation to disinterested experts. But quite the same stricture could be leveled at this Court's Rule 5: The basic requirement for admission to this Court's bar is prior admission to the bar of, i.e., prior approval by, the highest courts of the several states and possessions. Some states have higher standards, some lower; but surely it does not follow that Rule 5 therefore involves a denial of equal protection.

Third. Kadans argues (J.S. 6-9) that Nevada Supreme Court Rule 51(6) "tends to restrict free move-

ment of lawyers wishing to change residence from one state to another and are thus prevented from pursuing their occupations when they move from one part of a country to another."

Contrary to his contention, however, Rule 51(6) is as fully applicable to individuals who have lived all their lives in Nevada as it is to those who move there after having practiced elsewhere. Kadans was barred from taking the Nevada bar examination, not because he had not completed a prescribed period of residence in that state, but because he lacked the educational qualifications that Nevada required as a condition precedent.

That circumstance renders wholly inapplicable the two three-judge court decisions on which he relies (J. S. 8, 9), *Keenan* v. *Board of Law Examiners,* 317 F. Supp. 1350 (E.D. N.C.), and *Webster* v. *Wofford,* 321 F. Supp. 1259 (N.D. Ga.), both of which struck down residence requirements that were wholly unrelated to legal education. Thus, assuming for present purposes the correctness of both those cases, neither one has the slightest bearing on the present litigation.

It is true that Kadans, who was admitted to the bar in both Maryland and Michigan—his other admissions were derivative and did not require any examination (*supra,* p. 4)—now finds himself unable to meet the qualifications that Nevada requires for permission to take its test. But, along with Mr. Justice Holmes (*Truax* v. *Corrigan,* 257 U.S. 312, 342, 344), we should guard against "the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states."

For, indubitably, nothing in that Amendment prevents Nevada—along with 16 other states, see p. 9, *supra*—from imposing on those seeking admission to its bar higher or different standards of educations' excellence and attainment than those that appear adequate to the remaining states of the Union.

CONCLUSION

The appeal must be dismissed for want of jurisdiction. Treating the appeal papers as a petition for certiorari, as now required by 28 U.S.C. § 2103, certiorari should be denied.

Respectfully submitted.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-463

JOSEPH M. KADANS, Appellant

VS.

JON R. COLLINS, ET AL, as members
of the
NEVADA SUPREME COURT,
Appellees,

- - - - - - - - - - - - -

BRIEF OPPOSING MOTION TO DISMISS

JOSEPH M. KADANS, ESQ.
Appellant in pro per.
Member of the Bar of the
Supreme Court of the U.S.
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(Continued)

Supreme Court, U.S.
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INDEX

	Page
Appeal or certiorari	1, 17
The 17 States Point	2-7-16
Admission in Arizona	7
Nevada stands practically alone in rule	8
Experience rather than examination	8
No fault with ABA approval of schools	9
Real purpose of ABA law school list	9
Vice President of U.S. fellow graduate	9
High standing of Appellant in the law	10
Denial of admission conflicts with Schware	10
Nevada rule offends dictates of reason	11
Appellees quote from dissenting opinion	11
Substantial question involved here	12
Appellees do not apply their rule to all	13
U.S. Supreme Court has qualified Appellant	14
Relief sought	16-20

TABLE OF AUTHORITIES

Statutes

Federal

28 U.S.C. 1343	15
28 U.S.C. 1253	1, 17
28 U.S.C. 2103	17
28 U.S.C. 2201	20
28 U.S.C. 2281	5
28 U.S.C. 2284	6

State

Alaska -Sec. 08.08.140	12
Arizona Sup. Ct. Rule 28(c)(4)	7
Arkansas -25-109	6
Idaho 3-408	6
Illinois -Sup. Ct. Rule 705	3
Indiana -Sup. Ct. Rule 3-5(d)	3
Maine - Title 4, sec. 802	3
Nebraska -Title 7-109	3
New Hampshire - 311:3	4
New Mexico - Title 18-1-8	4
North Dakota, 27-11-25	4
South Dakota 16-16-12	5
West Virginia, Appendix, Part II	5
Wisconsin, 256.28(3)	6
Nevada -Sup. Ct. Rule 51(6)	16, 18

(Continued)

INDEX - CONTINUED

Page

CASES

Garland, Ex Parte, 18 L ed 366 ---------- 11, 14
Hackin v. Lockwood, 361 F 2d 499 --------7, 18, 19
Idlewild Liquor Corp. v. Epstein, 370 U.S. 713--18
Keenan v. Bd. of Law Examiners, 317 F.S. 1350-15
Law Students v Wadmond, 27 Led 2d 749 ---- 14
Nelson Case, Nev. Sup. Ct., 12-19-66 -------- 13
Poresky, Ex Parte, 290 U.S. 30 ---------- 19
Schware v. Bd. of Bar Exam. 353 U.S. 232 - 10, 17
Truax v. Corrigan, 257 U.S. 312 --------- 11
Webster v. Wofford, 321 F.S. 1259 ------ 15

LAW JOURNALS

J.A.B.A. Dec. 1921 ---------- 9
J.A.B.A. Oct. 1967 Vol. 53, p. 915 ------ 8, 16

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-463

JOSEPH M. KADANS, Appellant

v.

JON R. COLLINS, ET AL., as members of the NEVADA SUPREME COURT, Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS - 9TH CIRCUIT (No. 26,522)

- - - - - - - - - - - - - - - -

BRIEF OPPOSING MOTION TO DISMISS

- - - - - - - - - - - - - - - -

One of the questions raised by the Motion to Dismiss pertains to the question of the Appellant's right to appeal or whether he is limited to petition for certiorari. (Motion to Dismiss, page 6.) Of course, where there is a right of appeal, the controversy will be determined by the Supreme Court; whereas, a petition for certiorari may be denied consideration for one reason or another.

The Appellees argue that despite the clear wording of the federal statute that a case such as the case at bar is required by law "to be heard and determined by a district court of three judges" (28 USC 1253) the Appellees contend that "since the case was not in fact heard by a district court of three judges, a direct appeal to this Court will not lie." (Motion to Dismiss, page 6.)

Appellees believe that the wording of the federal statute is not plain and that in such a case it is good to look at the title of the statute and that if the title helps to explain what is not plain then this resolves the problem.

The title reads: "Direct appeals from decision of three judge courts." Appellees cite Maguire v. Commissioner, 313 U.S. 1, 9-10 and F. T. C. v. Mandel Brothers, 359 U.S. 385, 388-389 to support the view that the title of the statute may be viewed in order to remove any ambiguities that may exist in the text of the statute.

The procedural question as to the route that may be taken to reach the Supreme Court of the United States on the merits is rather inconsequential. The important point is that we are here and that, further, appellees concede that there is jurisdiction but say that "the substantive question presented does not warrant further review." (Motion to Dismiss, p. 7)

APPELLEES DO NOT SEE THE ISSUE

Appellees have failed to see the true issue in this case. The issue involves the right of a lawyer to move from one state to another and be subject only to reasonable rules. Reasonable rules for lawyers in effect in practically all of the States merely require that the transferring lawyer be of good character, have been admitted to practice before the highest court of the state of his former residence and have practiced for a reasonable number of years in the state of former residence.

Appellees have listed 17 States they say "do not permit any alternative to their requirement of graduation from an A. B. A. -approved law school." (Motion to Dismiss, p. 9)

Appellees have obviously erred in listing Alaska as one of these States. The Alaska Statutes (Sec. 08. 08. 140, Out-of-state attorneys) do allow an alternative. They provide that graduation from an ABA-approved law school is not required if the attorney "has been engaged in the active practice of the law for at least 10 years." Appellant was engaged in the active practice of law from 1943 to 1962, when he first arrived in Nevada, a period of 19 years.

Appellees have further committed obvious error in listing the State of Illinois in the group named by them as having no alternative to the ABA-approved law school requirement. Supreme Court Rule 705 of Illinois allows admission of attorneys to the Bar of Illinois without examination "if he has actively and continuously practiced law in such other jurisdiction for a period of at least five years within the period of seven years immediately prior to making application in Illinois."

Appellees committed further obvious error in listing the State of Indiana in the group. With regard to lawyers from other States moving to Indiana, graduation from a law school not approved by the A. B. A. does not bar admission. The alternative provided by Indiana is that in such event "the State Board of Law Examiners may in its discretion substitute for said requirement such examination of the applicant as the board may deem necessary." (Rule3-5 (d) Admission on foreign license. Rules of the Supreme Court."

Appellees committed further obvious error in listing the State of Maine. This State has a rule that attorneys from other states "in good standing and in active practice for at least 3 years and has been a bona fide resident of this State for the 6 months last past, shall furnish the Supreme Judicial Court a certificate of admission to practice in the court of last resort of such state or a certificate of admission to any district court of the United States * * * " after which the Court "may in its discretion, if satisfied as to his qualifications, admit such person to practice on motion made by some member of the bar of said court." (From Title 4, Maine Statutes, sec. 802.)

Appellees committed further obvious error in listing the State of Nebraska. That State allows attorneys from other states to be admitted without examination. Again, as an alternative to an ABA-approved law school, the Nebraska statute (Attorneys At Law, Title 7-109) reads: "* * * proving that he has practiced law five full years in courts of record under license in any state, and proving also that he is a person of good moral character, may be admitted by the Supreme Court

to the bar in this state without examination."

Appellees again obviously erred in listing the State of New Hampshire as a State having no alternative to the rule requiring legal education from an ABA-approved law school. Statutes of the State of Nebraska (Occupations and Professions, 3ll: 3 Attorneys and Counselors) read:

> "Any person who has been admitted to practice as an attorney or counselor of the highest judicial court of another state of which he was then an inhabitant may be admitted to practice as an attorney in this state, upon satisfactory evidence of his good moral character, without examination concerning his other qualifications, when such examination is rendered unnecessary by the circumstances of the case."

The complete misapprehension of appellees in failing to understand the principle issue of this case is further emphasized by the listing of the State of New Mexico as a state having no alternative to the rule that an attorney moving to New Mexico and seeking admission to the bar of that State must be a graduate of a law school approved by the ABA. On the contrary, New Mexico has a rule that when an applicant for admission to the bar of that State and if "he be an attorney duly admitted to the bar in another state and actively engaged in the practice of law therein" may be admitted on certificate and motion. (Rules, Regulations for Admission and Practice, Attorneys At Law, Title 18-1-8 New Mexico Statutes)

Appellees additionally inadvertently submitted erroneous information to this Honorable Court in stating that the State of North Dakota has no alternative to the rule requiring graduation from an ABA-approved law school. The Supreme Court of North Dakota has discretion under the statutes of that State to admit to the bar without examination an attorney who "has been admitted to the bar of some other state, territory, or the District of Columbia; and 5. Has practiced law in such state, territory, or in the District of Columbia for not less than five years." (N. D. Statutes 27-11-25)

Evidence of total misconception of the issue at

bar is further emphasized by the obvious error of Appellees in listing the State of South Dakota as a State wherein there is no alternative to the rule that there is no admission to the bar of that State unless the attorney-applicant is a graduate of an ABA-approved law school. The statutes of that State (Courts and Judiciary, 16-16-12, entitled Qualifications for admission on certificate from another state - Papers filed with application) reads:

> "Any person duly admitted to practice in other states or territories or the District of Columbia desiring admission to practice law in this state may make application to the board of bar examiners and upon proof that he has been admitted to practice in the highest court of such other jurisdiction or jurisdictions and has been actively engaged in the general practice of the law therein, or the teaching of law as a full-time instructor in a reputable law school or schools, for at least five years next preceding his application may in the discretion of the court be admitted to the general practice of law in this state without examination. * * * "

Another obvious error and misleading statement, inadvertent of course, is the positive statement in the Motion to Dismiss, page 9, that the State of West Virginia has no alternative to the rule that an applicant for admission to the bar must be a graduate of an ABA-approved law school. West Virginia statutes (Appendix, Nonresident Attorneys, Part II) clearly state that attorneys from other states may be admitted without examination upon the filing of a certificate "of the presiding judge of one of the trial courts of record in the former home city or county of applicant, or the affidavits of two practitioners in his home city or county, showing that the applicant has practiced law actively for at least five of the immediately preceding seven years; * * *." As in the rules of the other states listed herein, there is no requirement of graduation from an ABA-approved law school for such attorney applicants.

Appellees have stated that no less than 17 states "do not permit any alternative to their requirement of graduation from an A. B. A. -approved law school." (Motion to Dismiss, page 9) Among these states they have listed the State of Wisconsin. The Wisconsin statutes (256. 28 (3) Courts of Record, general provisions) have requirements that attorneys seeking admission to the Wisconsin bar "may be admitted to practice law in this state upon motion, or, when the court is not in session, by one of the justices thereof , after filing with the clerk of the supreme court (1) his written application therefor, (2) a certificate of his admission to practice law by a court of last resort in such other state or territory or the District of Columbia and (3) satisfactory proof that he is a citizen of the United States and a resident of this state, is of good moral character, and has been engaged in actual practice in such other state or states or territory or the District of Columbia or in the courts of the United States for 5 years within the last 8 years prior to filing his application, exclusive in each case of time spent in the armed forces."

Of the 17 states mentioned by Appellees, this brief opposing the Motion to Dismiss has thus far named Alaska, Illinois, Indiana, Maine, Nebraska, New Hampshire, New Mexico, North Dakota, South Dakota, West Virginia and Wisconsin. These number 11 states that should certainly be deducted from the figure of 17 named by Appellees. A brief review of the statutes of the State of Arkansas indicates that nonresident attorneys are allowed to practice in Arkansas "with satisfactory proof of his being a member of the bar in good standing in the state of his residence." (25-109, Arkansas statutes) However, it is not clear as to the rule applicable when such nonresident attorney becomes a resident of Arkansas.

In the State of Idaho, "The board of commissioners of the Idaho State Bar) shall have power to determine, by rules, subject to the approval of the Supreme Court, the qualifications and requirements for admission to the practice of law and to conduct investigation and examination of applicants, and it shall from time to time certify to the Supreme Court the names of those applicants found to be qualified." (Idaho Statutes 3-408, Attorneys and Counselors at Law) There do not seem to be indicated in the statutes

their precise rules governing attorney applicants from other states and rather than make an allegation that could be incorrect the Appellant chooses to omit this State from the list of States that clearly allow attorneys from other states to be admitted either with or without examination and without regard to the listing of the law school as an ABA-approved school.

It is likewise not clear from an examination of the statutes of the State of Louisiana whether or not attorneys from other States may be admitted to the bar of Louisiana irrespective of graduation from an ABA-approved law school. The same comment is made with regard to examination of the statutes of Minnesota and New Jersey. Apparently, the specific requirements are not in the statutory laws but are to be found in rules adopted by state boards of bar examiners not found in the statutes.

THE STATE OF ARIZONA

Appellees make much ado about the admission rules of the State of Arizona, relying mainly if not entirely upon the case of Hackin v. Lockwood, 361 F 2d 499, wherein the United States Court of Appeals, 9th Circuit, upheld the right of the State of Arizona to deny to Hackin the right to take the State bar examination. Appellees consider that the rule in the Hackin Case governs the case at bar.

Can it be possible that Appellees do not know that if Appellant herein applied for admission to the bar of the State of Arizona that Appellant would be promptly admitted under the laws of Arizona? Apparently they do not realize this or they would not be contesting this suit.

Examination of the statutes of Arizona clearly indicate that this Appellant would be eligible for admission to the bar of that State. The Rules of the Supreme Court of Arizona, providing for the admission of attorneys, in addition to requiring that applicants for admission to the bar be graduates of law schools "provisionally or fully approved by the American Bar Association at the time of his grad-

uation" also, alternatively, to use the word of Appellees has this provision:

> "provided that this requirement shall not apply to an applicant who has been actively engaged in the practice of law in some other state or states for at least five years of the last seven years prior to his application for admission to practice in Arizona."

Thus, it is most clear, [redacted] that the Hackin case, supra, the Arizona case upon which Appellees rely, is entirely inapplicable to the case at bar, Appellant having practiced law for 19 years in the States of Maryland and Michigan prior to making application for admission to the bar of the State of Nevada.

If Nevada does not stand alone in adhering to the rule that regardless of the number of years of practice of an attorney-applicant and regardless of the number of law-bookswritten by the attorney-applicant or the law schools wherein such attorney-applicant has taught, such an applicant must nevertheless be denied admission to the State bar examination if he has not graduated from an A. B. A.-approved law school, then Nevada has very little company in adhering to that rule. In fact, the research done by Appellant indicates that no other State -- other than Nevada -- has such a rule.

A recent article in the Journal of the American Bar Association (Vol. 53, p. 915, October, 1967) points out that only 11 of the 50 states still require attorneys moving from one part of the United States to another part to take the State bar examination. In addition the article makes the statement that:

> "Professional fitness is measured in terms of actual experience instead of by formal examination."

THE ABA-APPROVED LAW SCHOOL CONCEPT IS NOT INVOLVED IN THIS CASE.

Appellees would have this Honorable Court believe that Appellant is seeking to tear down the concept of use of the present system of approval of law schools by the A. B. A. This is certainly not the intention of Appellant. The Appellant is in favor of continuing the concept of intending law students selecting for the study of law those law schools on the list of the American Bar Association's Section of Legal Education and Admissions to the Bar.. As a matter of fact, Appellant is actually a member of the Section and receives the publications and news letters issued by the section.

Appellant has taught law at a fully accredited ABA-approved law school -- Loyola University School of Law of Los Angeles and Appellant has in fact graduated from a law school fully accredited by the State of Maryland and passed the Maryland State bar examination in 1943 and was admitted to the Maryland bar the same year. The law school attended by Appellant, the University of Baltimore, is the same law school attended by the present Vice-President of the United States, the Hon. Spiro Agnew, who attended the law school at about the same time it was attended by Appellant. Many other outstanding officials and judges have attended this same law school.

It must be remembered, as stated in the A. B. A. Journal of December, 1921 that the list of law schools was intended for the guidance of "intending law students." It was never intended that the list be . used to bar attorneys from moving from one part of the United States to another, in the event they learned law from some school not on the list. To get on the approved ABA list, law schools had to have a minimum library of law books and a minimum number of law school full time professors. Many law schools, such as the University of Baltimore, advised students to use the county law libraries and the professors were practicing lawyers and judges who taught law school at night. Appellant chose to attend a night law school because of his government employment as a Safety Inspector with the U. S. Interstate Commerce Commission.

In addition to teaching at Loyola Law School, Appellant is the author of PRINCIPLES OF MARITIME LAW, a text recommended by the American Association of Law Schools for law school students. In addition, Appellant has taught Federal Procedure at Eastern College of Commerce and Law, Baltimore, Maryland, a State-approved law school and has written the book FEDERAL ADMINISTRATIVE AND COURT PROCEDURE. Appellant has also taught insurance law and has written the book ELEMENTS OF INSURANCE. After moving from Baltimore, Maryland to Detroit, Michigan in 1950, Appellant was admitted to the Michigan Bar on certificate and motion and practiced law from the time of admission until 1962 when Appellant moved to the State of Nevada. While practicing law in Detroit, Appellant taught economics, public speaking, government, history of civilization and business law at Great Lakes College in Detroit. These items are mentioned to indicate the broad education of Appellant, countering the implication running throughout the Motion to Dismiss that Appellant's qualifications are too limited to entitle him to take the Nevada bar examination.

Referring to Schware v. Board of Bar Examiners, 353 U.S. 232, "any qualification must have a rational connection with the applicant's fitness or capacity to practice law." When an attorney-applicant has practiced law in a sister state or states for 19 years, and has taught in two law schools, one fully accredited by the ABA and the other fully accredited by the State of Maryland, and has written several law books, one recommended by the Association of American Law Schools and has taught several important college subjects to college undergraduates, the qualification of graduation from an ABA-approved law school in order to take a state bar examination does not have a rational connection with the applicant's fitness or capacity to practice law.

The Nevada Supreme Court Rule, therefore, adopted by Appellees, in not providing for lawyers with many years of law practice and graduation from a law school approved by his state of former residence,

is therefore believed to be void on its face for overbreadth and for "chilling" the 14th Amendment rights of Appellant affecting due process of law. This case is similar to the Schware Case, supra, wherein the Court held:

> "Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause. Such is the case here."

The late Mr. Justice Black, in speaking for the majority in the Schware Case, supra, noted:

> "We need not enter into a discussion whether the practice of law is a 'right'or a 'privilege.' Regardless of how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace. Ex Parte Garland, 4 Wall. 333, 18 L ed 366, 370."

DISSENTING OPINION QUOTE

Appellees have quoted from a dissenting opinion, neglecting to note that the quotation was from a dissent. They refer to the case of Truax v. Corrigan, 257 U.S. 312 (Motion to Dismiss, page 11) and cite Mr. Justice Holmes as guarding against the use of the 14th Amendment beyond the absolute compulsion of its words. The majority opinion was written by Chief Justice Taft, wherein the Court reversed a decision of the Supreme Courto of the State of Arizona in a case involving injunctive relief in an industrial dispute. The majority concluded that the defendants should have been required to answer, in the case below and that the demurrer should have been overruled and that "if the evidence sustains the averments of the complaint, an injunction should issue as prayed."

Appellees would have this Honorable Court believe that Mr. Justice Holmes favored restriction of the use of the 14th Amendment. They avoid using the first part of the sentence and avoid using the final part of the sentence and, no doubt due to typographical error, indicate to this Honorable Court that the sentence of Mr. Justice Holmes ended with the word "states." Actually, the full sentence of Mr. Justice Holmes reads:

> "There is nothing that I more deprecate than the use of the 14th Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect." (From dissenting opinion of Mr. Justice Holmes in Truax v. Corrigan, supra.)

When the full sentence is read in its whole concept, the meaning of it seems to be entirely the reverse which Appellees seem to desire to convey to the Court, inadvertently of course. In other words, Mr. Justice Holmes believed that the 14th Amendment should not be stifled or its use unjustifiably restricted to prevent important social experiments desired by a community even though the experiment may seem futile or noxious to him. Appellees would have the Court believe that the 14th Amendment should be most rigidly restricted, according to Mr. Justice Holmes. Without noting that this was in a dissent, Appellees mistakenly and improvidently gave the impression that the majority of the Court, in the Truax Case, expressed the view that a narrow interpretation of the 14th Amendment by the Supreme Court of the United States is the law of the land. This view is far from justified.

SUBSTANTIAL QUESTION

From the foregoing, it appears clear that a substantial question of transcending national importance is involved. There are not only large numbers of

attorneys interested in learning whether or not a state adopting a most unreasonable, arbitrary and restrictive rule for admission to practice can thus prevent them from moving freely to Nevada or any other States that may have highly restrictive and unreasonable rules, but there are also many citizens in Nevada and possibly in other states who are denied the benefit of the services of attorneys such as the Appellant herein because highly restrictive and unreasonable rules prevent those attorneys from being employed to serve them.

In addition, it is of vital and substantial importance to Appellant, who for eight years has instituted numerous legal actions and petitions in Nevada seeking to be allowed to take the Nevada bar examination, all to no avail. As far back as 1963, Appellant paid the required $200.00 fee with his application after being told by the Secretary of the State Bar of Nevada by letter that no answer could be given as to the admission to the bar examination even when a non-ABA-approved law school was involved unless formal application was made and the fee paid.

Incidentally, Appellees do not apply the ABA law school rule uniformly. In Nevada Supreme Court Case No. 5114, filed Dec. 19, 1966, the Appellees admitted Mr. Clarence A. Nelson, Jr. to the practice of law in Nevada, ruling that Mr. Nelson had moved to Nevada because of "medical necessity." The Appellees were fully cognizant of the fact that Mr. Nelson had graduated from a non-ABA-approved law school.

The Supreme Court has ruled in numerous cases that it will take jurisdiction and rule on matters involving admission to the bar.

Furthermore, the Supreme Court's own bar is involved. Appellant, as a member of the bar of the United States Supreme Court, is effectively estopped from taking cases to this Honorable Court because the State of Nevada, by Appellee's Rule 51(6),

prevents Appellant from taking cases to the courts -- any courts.

This Honorable Court long ago decided in Re Garland, supra, that:

> "The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors, and are entitled to appear as such and conduct causes therein."

Nevertheless, despite this statement of the Supreme Court of the United States, Appellees have not only denied to Appellant the right to practice law but have even denied to him the right to take the state bar examination so that he may demonstrate his knowledge of the law. Appellees have done this despite the fact that Appellant graduated a law school fully approved by a sister state; Appellant was admitted to the practice of law by a sister state; and Appellant practiced law for 19 years in two sister states.

LAW STUDENTS RESEARCH COUNCIL

Appellees refer to the case of Law Students Research Council v. Wadmond, 27 L. Ed 2d 749 and although this case refers to the right of a State to inquire of applicants for bar admission as to their views on the violent overthrow of government, Appellees insist this case applies to the case at bar, where Appellant is an attorney-applicant seeking only to have the right to take the Nevada state bar examination and being barred therefrom solely because his law school, although approved by the State of his then residence, Maryland, has never been on the list of ABA-approved law schools.

Appellees assert that the case at bar is to be bound by the Law Students Research Council Case although they are careful in their Motion to Dismiss to assert that two other cases, dealing

vith residence requirements, are wholly inapplicable. Pages 10 and 11 of Motion to Dismiss)

While Appellees rely on the Law Students Research Council Case, supra, it is pointed out that his Honorable Court commented that:

> "We note at the outset that no person involved in this case has been refused admission to the New York Bar."

On the other hand, the residence cases (Keenan v. Board of Law Examiners, 317 F. Supp. 1350 and Webster v. Wofford, 321 F. Supp. 1259) both involve denial of admission to practice law. Thus, here would seem to be more relevancy in the residence cases than in the Law Students' questionnaire Cases, supra.

Appellees designate the Keenan case as wholly inapplicable despite the fact that the three-judge court made this statement:

> " *** federal district courts have jurisdiction under 28 USC 1343 to consider claims arising out of the application by state officials of a general bar admission requirement that is alleged to be unconstitutional on its face."

Inasmuch as in the case at bar, Appellant alleges that the rule of Appellees is unconstitutional on its face, then there would certainly seem to be federal court jurisdiction and the action of the lower federal district court judge in dismissing the action without requiring an answer would seem to be without merit and in need of reversal.

The Law Students Case, supra resulted in a ruling that the State of New York could continue to make constitutionally permissible investigations of applicants. "New York has made its choice. To disturb it would be beyond the power of this Court." So ruled this Honorable Court, and there is no conflict between that decision and the case now

before this Honorable Court. Nevertheless, Appellees, in the Motion to Dismiss (p. 10) urge this court to take the view that this Honorable Court has no power to disturb the overbroad Rule 51(6) of Appellees that prevents this Appellant and many other attorneys similarly educated in non-ABA approved law schools from taking the Nevada bar examination.

Appellant does not question the right of Appellees to require attorney-applicants to take the Nevada bar examination, although Nevada is one of 11 States in the Union that acts so harshly in regard to attorneys who wish to move to Nevada from other parts of the country. (J. A. B. A. Vol. 53, p. 915, Oct. 1967) Appellant does question the right of Appellees to adopt a rule that bars attorney-applicants from taking the state bar examination unless graduated from an ABA-approved law school. Although Appellees have stated in their Motion to Dismiss that 17 states have similar rules, Appellant in this brief opposing the Motion to Dismiss has shown that this statement of Appellees is obviously in error insofar as 11 states are concerned.

CONCLUSION

Appellant respectfully suggests to this Honorable Court as follows:

A. That this Court deny the Motion to Dismiss for the reason that a substantial federal question is presented. For eight years, Appellant has been denied the right to take the Nevada bar examination due to an arbitrary and unreasonable rule adopted by Appellees. As a result he has been suffering irreparable injury since that time by being denied the right of practicing his profession. In addition, many other lawyers situated in similar positions to Appellant, will be affected by this decision and a large number of citizens are likewise affected, as they may not select as

their attorneys those attorneys residing in Nevada who have not been admitted to the practice of law in Nevada because of Rule 51(6) adopted by Appellees.

B. That this Court consider this as an appeal rather than as a petition for a Writ of Certiorari to the Ninth Circuit. The statute involved, 28 USC 1253 clearly states that a party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. Such an appeal may be a direct appeal. In the case at bar, however, Appellant chose to first appeal to the United States Court of Appeals, Ninth Circuit, and upon denial of relief in that Court, Appellant decided to continue to seek relief by continuing the appellate process to the United States Supreme Court. It would be violative of the plain directions and intent of the Congress to deny such appeal to the Supreme Court of the United States. By taking away from a single judge court the right to declare a state statute unconstitutional, the Congress allowed the right to take an appeal direct to the Supreme Court as compensation for such denial of single judge court action.

C. That even if this is to be considered as a petition for a writ of certiorari by reason of Title 28 USC 2103 (as cited on page 3 of Motion to Dismiss) then in such instance certiorari should be allowed as the Court of Appeals, Ninth Circuit, has decided a federal question in such a way that it conflicts with applicable decisions of the Supreme Court of the United States, particularly in conflict with the Schware Case, supra.

D. The District Court Judge erred in not asking for or requesting the Chief Judge of the Ninth Circuit to arrange for a three-judge Court. The Complaint filed with the District Court alleged that the Supreme Court Rule (51(6)) was unconstitutional (14th Amendment), an injunction was sought to enjoin application of the rule, and it is conceded by Appellees that the rule has the effect of a State statute. "When an application for a statutory three-judge court is addressed to a district court, the court's inquiry is appropriately limited to determining whether the constitutional issue is substantial, whether the complaint at least formally alleges a basis for equitable relief, and whether the case presented otherwise comes within the requirements of the three-judge statute. Those criteria were assuredly met here, and the applicable jurisdictional statute therefore made it impermissible for a single judge to decide the merits of the case, either by granting or by withholding relief." (Citation from Idlewild Liquor Corp. v. Epstein, 370 U.S. 713) The action of the U.S. Court of Appeals in affirming the single judge's action in withholding relief or in failing to convene a three-judge court should therefore be reversed. The case should therefore be returned to the District Court with instructions to convene a three-judge court to consider this litigation. There has been more than adequate representation made here to remove any doubt as to the existence of a substantial federal question. The U.S. Court of Appeals declined to recognize the issue to be a substantial federal question, relying solely upon the case of Hackin v. Lockwood, supra, but that case is clearly distinguished from the case at bar. The Notice of Appeal to the Supreme Court stressed that a three-judge court should have been convened and the jurisdiction statement (p. 8) makes the point that the "District Court has clearly abused its discretion by arbitrarily and capriciously denying to appellant his clear right to a three-judge court."

E. Appellees have closed their eyes to the real issue. Appellees have constantly taken the position

that the case does not deserve a three-judge court because of the decision of the Ninth Circuit in Hackin v. Lockwood, supra. However, it has been pointed out that the Hackin Case, supra concerns a layman seeking to take the state bar examination, whereas the case at bar is the case of an attorney applicant who was admitted to his state's bar examination (Maryland) many years ago (1943), passed the examination and actively spent full time in practicing law for many years (19) prior to seeking admission to the Nevada State Bar Examination, denied to him by Appellees on the basis of the attorney having attended a law school approved by his State (Maryland) but not approved by the American Bar Association. Appellant commenced his law school studies in 1940, at which time Appellees' did not have the ABA law school requirement in effect. Appellees have on several occasions denied Appellant the right to take the Nevada bar examination solely for the law school reason. They now insist that the appeal should be dismissed and continue to insist that their law school rule is rational and reasonable despite the fact that Nevada stands alone or almost alone in applying the ABA law school rule to seasoned attorneys moving from one state to another.

F. It is therefore respectfully urged that this Honorable Court reverse the decision of the Ninth Circuit and order that this litigation be considered by a three-judge federal court as required by 28 USC 2281 and 28 USC 2284. The Complaint presented to the U.S. District Court is not "obviously without merit" and there have been no previous decisions of this Court on this subject of controversy and therefore no previous decision of this Court forecloses the subject. (Ex parte Poresky, 290 U.S. 30.)

G. As alternative relief, inasmuch as Appellant is daily sustaining irreparable injury by not being allowed to practice his profession and inasmuch as this is also an action filed for a Declaratory Judgment under 28 USC 2201 and inasmuch as under the statute the "court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar" and inasmuch as appellant has a clearly meritorious case, it is respectfully suggested to this Honorable Court that the Court, having all the facts before it, render summary judgment without any further delay.

H. If summary judgment is rendered at this time without any further delay, it is respectfully suggested that this Honorable Court order Appellees to admit Appellant to the roll of attorneys allowed to practice law in Nevada forthwith, Appellant being obviously qualified to practice law; with the condition or provision that allowance to practice law be continued until Appellant takes the State bar examination which is not scheduled to take place until September, 1972 and that if after taking the state bar examination and should Appellant fail to pass the said examination the right to continue practice law shall then terminate until such time as Appellant may pass the examination in future examinations. The Appellant herein is already 59 years of age and the continued denial to him of his clear right to practice his profession is a most incongruous and unseemly denial of justice.

Respectfully submitted,

JOSEPH M. KADANS
Appellant. In pro per.

NO. 71-463

OCTOBER TERM, 1971

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JAN 29 1972
E. ROBERT SEAVER, CLERK

JOSEPH M. KADANS,
Appellant

v.

JON R. COLLINS, ET AL.,
as members of the
NEVADA SUPREME COURT,
Appellees.

PETITION FOR REHEARING

Submitted by
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3519 Thom Boulevard
Las Vegas, Nevada 89106

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-463

JOSEPH M. KADANS, Appellant

V.

JON R. COLLINS, ET AL., as members
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NEVADA SUPREME COURT,
Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS - NINTH CIRCUIT

PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of certiorari, wherein the Court treated the appeal taken as a petition for writ of certiorari, entered on January 10, 1972, and (2) granting the petition. As grounds for this motion, petitioner states the following:

1. Intervening Circumstances of Substantial or Controlling Effect.

Since the decision of January 10, 1972, aforementioned Petitioner has obtained additional factual information of great importance to this case.

It will be recalled that the Motion to Dismiss Appeal for Want of Jurisdiction, filed on behalf of Respondents by Frederick Bernays Wiener, Esquire, contained the following statement on Page 9 of the Motion:

"No less than 17 states - Alaska, Arkansas, Idaho, Illinois, Indiana, Louisiana, Maine, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, West Virginia, and Wisconsin -- do not permit any alternative to their requirement of graduation from an A. B. A. -approved law school."

In the Brief Opposing Motion to Dismiss, Petitioner made it crystal clear that under the laws of the State of Alaska (Page 2 of Motion), an attorney-applicant seeking admission to the Alaska Bar need not be a graduate from an A. B. A. - approved law school if the attorney "has been engaged in the active practice of the law for at least 10 years." (Quotation from Alaska Statutes, Sec. 08. 08. 140, in regard to attorney applicants.)

The Brief also made it clear that Mr. Wiener erred with regard to Illinois (See Page 3 of the said Brief), who admit attorney-applicants with five years of practice, and with regard to Indiana (Page 3 of Brief), where the State Board of Bar Examiners may waive the ABA law school requirement, and with regard to Maine (Page 3 of Brief) where a three year practice requirement for attorney-applicants is in effect, and in regard to Nebraska (Page 3 of Brief), where a five year practice requirement is in effect for applicants such as the Petitioner herein, and in regard to New Hampshire (see Page 4 of Brief) where attorneys such as the Petitioner are admitted without any examination except as to moral character, and with regard to . : New Mexico (Page 4 of Brief), where the Petitioner herein would be allowed to be admitted on motion without any examination by reason of being "an attorney duly admitted to the bar in another state", and in North Dakota (Page 4 of Brief), where a five year requirement is in effect, which Petitioner herein could have easily met if Petitioner had applied for admission in that State, and with regard to South Dakota (Page 5 of Brief), wherein a similar 5-year requirement is in effect, and with regard to West Virginia (Page 5 of Brief), wherein a five year requirement is also

in effect and finally, with regard to the State of Wisconsin, where a five-year law practice requirement is also in effect, which Petitioner could easily have met, as Petitioner was first admitted to the practice of law in Maryland in 1943 and was actively engaged in the practice of law until he moved his residence to the State of Nevada in 1962, which has, since that year, prevented Petitioner from continuing to practice his profession.

Petitioner respectfully points to Pages 6 and 7 of his Brief Opposing Motion to Dismiss wherein Petitioner stated that he was in doubt with regard to the admission requirements of attorney-applicants in the States of Arkansas, Idaho, Louisiana, Minnesota and New Jersey.

There was no time, prior to preparing the Brief Opposing the Motion to Dismiss, to write to the aforementioned five States to ascertain their admission requirements for attorney-applicants as under the Supreme Court Rules (Rule 16 (3) and (4) the Motion to Dismiss filed by Mr. Wiener is required to be distributed to the Justices "upon the filing of such motion." Furthermore, distribution of the motion may not be delayed pending filing of a brief opposing the motion to dismiss.

It could not have reasonably been expected that Mr. Wiener would make such a statement in his Motion to Dismiss as is set forth at the top of Page 2 of this Petition, averring that 17 states, including Nevada "do not permit any alternative to their requirement of graduation from an A. B. A.-approved law school."

The statement of Mr. Wiener to the members of this Honorable Court, aforesaid, is difficult to understand. After all, of the 17 States named by him, the statutes on file in all good law libraries clearly show that he was in error with regard to eleven States, as listed in the foregoing parts of this Petition.

In addition, Petitioner has written to the Supreme Court Clerks of the States of Arkansas, Idaho, Louisiana, Minnesota and New Jersey to ascertain the rules of admission to the bars of these states with regard to attorney applicants, following the Brief Opposing Motion to Dismiss.

Replies from these States reveal that the State of Arkansas allows applicants such as the Petitioner herein to be admitted without any bar examination whatsoever where the attorney is found to be "of good moral character" and if he has "been admitted for at least four years to the Bar of the highest Appellate Court of another state where the requirements for admission to the Bar are substantially equivalent to the requirements of this state * * *." Petitioner, a member of the Bar of the States of Maryland and Michigan, meets these requirements.

The reply from Idaho indicates that under Rule 104 of the Rules of the Supreme Court and the Board of Commissioners of the Idaho State Bar, attorney applicants "admitted to practice before the highest court of another state *** and who has been actively engaged in the practice of law as his principal occupation in any such jurisdiction or jurisdictions for not less than 5 years within the last 7 years immediately preceding the filing of his application may apply for admission to the Idaho State Bar." There is no requirement, as to attorney applicants, for graduation from an ABA-approved law school.

The reply from Louisiana indicates that this State, similar to Nevada, has an over-broad requirement barring admissions to the bar examination of that State unless the attorney applicant is a graduate of a law school approved by the American Bar Association. There is no allowance for the number of years of practice, the existence of other and perhaps equally strict requirements for admission that applied to attorneys admitted many years ago or the high standing of the attorney applicant at the bar of the State of his former residence.

The reply from Minnesota indicates that under Rule XI of the Supreme Court Rules attorneys from other states (such as the Petitioner herein) "may be admitted to the practice of law upon motion without examination" upon evidence of practicing law for at least five years. There is no requirement for graduation from an A. B. A. -approved law school.

The State of New Jersey has a rule of the Board of Bar Examiners that "attorneys from other states must meet the standards of the rules to the same extent as all other applicants, including passing the examination." Thus, New Jersey is in the same class as Nevada and Louisiana in having in effect the same over-broad requirement that irrespective of the qualifications of the attorney applicant or of the number of years of practice or the standing of the attorney as a lawyer or as a jurist, he must nevertheless be a graduate of a law school approved by the American Bar Association.

The State of New Jersey does have a provision allowing attorney applicants who have taught at an approved law school to be admitted without any examination whatsoever. The Petitioner herein has taught at Loyola University School of Law at Los Angeles, teaching admiralty law, the petitioner herein having authored the text-book PRINCIPLES OF MARITIME LAW, approved and recommended as a student text-book by the Association of American Law Schools.

However, the State of Nevada, in the case at Bar, makes no provision for attorney applicants who have taught at an approved law school.

Thus, instead of 17 States, as Mr. Wiener claimed in his Motion to Dismiss, as aforementioned, there are only three States, Nevada included, that have the overbroad requirements preventing attorneys from moving to these states to take up residence and to practice their professions if these attorneys are of the class of attorneys who have graduated from a law school not approved by the American Bar Association or have studied law in a law office, as allowed in some

States and which was a customary practice for many years in many of the States.

2. Misapprehension of the Case.

In view of the fact that Mr. Wiener is a lawyer of many years standing, since 1931, and having authored the books "Effective Appellate Advocacy", "Briefing and Arguing Federal Appeals," and "Civilians Under Military Justice" and having been an assistant to the Solicitor General from 1945 to 1948, as well as the Reporter to the Committee of the Supreme Court of the United States on Revision of the Rules, it is inconceivable that such a learned student of the law, actually a jurist, could make such an erroneous statement to this Honorable Court (stating that there were 17 States who do not permit any alternative to their requirement of graduation from an A.B.A.-approved law school) as Mr. Wiener has long known that it is most reprehensible to make a misleading statement to any Court, and especially to such a body as the Supreme Court of the United States.

The only reasonable conclusion, therefore, is that Mr. Wiener has misapprehended the tenor of the case and that he has regarded Petitioner not as an attorney applicant but as a recent law school graduate who has never been admitted to the bar of any State. Only then could it be conceivable that an attorney with Mr. Wiener's standing and prestige would make such a statement to this Honorable Court.

It is therefore respectfully and most urgently suggested to this Honorable Court that Mr. Wiener, as counsel for Respondents, be asked to reply to this Motion for Rehearing so that he will be given an opportunity to restore his good standing before this Honorable Court and explain why he made the 17-state statement in his Motion to Dismiss.

It is also quite conceivable that because of Mr. Wiener's standing before the bar of this Honorable Court, prior to this case the brief he filed with his Motion to Dismiss may have been given more weight than if the Motion and brief had been filed by a lesser known advocate. Consequently, it is quite conceivable

that the Honorable members of this Court, severely pressed by a heavy docket, with the exception of Honorable Justices Douglas and Brennan, who voted to note jurisdiction and to grant the petition, also misapprehended the tenor of the case and considered this case to be just another one of the cases where a law student graduated from a non-ABA-approved law school and sought to take the state bar examination to be admitted to the practice of law.

This belief as to misapprehension by the Justices other than Justices Douglas and Brennan is fortified by the fact that the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court as follows:

> "The case is affirmed on the authority of our Hackin v. Lockwood, 9 Cir., 361 F 2d 499."

It will be noted that in the Hackin Case, supra, Mr. Hackin attended a law school not approved by the State of Arizona whereas Petitioner attended and graduated from a law school approved by his State (Maryland); that Mr. Hackin, when he applied to take the Arizona bar examination, had never been admitted to the bar of any other State, whereas Petitioner had been formally admitted to the bars of Maryland, Michigan, the United States Supreme Court and several U.S. Courts of Appeals at the time he applied for permission to take the Nevada State Bar Examination. Thus, there are great and important distinctions between the Hackin Case, supra and the case at bar.

Just as in Reid v. Covert, 352 U.S. 901, 354 U.S. 1, where the Supreme Court of the United States granted rehearing where the Court apparently had substantial doubt as to the correctness of its prior decision, so would it likewise appear that in the case at bar a grievous injustice with irreparable injury to an outstanding lawyer, law writer and law professor is being done and can only be repaired upon granting of this Petition for Rehearing or at least requesting Mr. Wiener to answer this Petition.

The Ninth Circuit misapprehended the tenor of this case, depriving Petitioner of his right to take the Nevada bar examination and to continue to practice his profession just as the District Court Judge Roger Foley misapprehended the tenor of this case, relying upon the same Ninth Circuit Case of Hackin v. Lockwood, supra, a wholly inapplicable case.

Finally, it is pointed out, respectfully, to this Honorable Court, that throughout the Motion to Dismiss, filed by Mr. Wiener, his argument ran solely to his 17-state statement as aforesaid. On Page 8, in the first portion of his argument, he indicated reliance on the Hackin Case and quoted from the decision of that case that the various states may require what they wish before allowing the taking of bar examinations. In the Hackin Case, because Hackin was not an attorney applicant, the U.S. Supreme Court denied review (385 U.S. 960), whereas the case at bar is entirely different in many important aspects.

CONCLUSION

For the reasons set forth above, as well as those contained in the Jurisdictional Statement and in the Brief Opposing Motion to Dismiss, Petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

_____
Petitioner - In pro per

CERTIFICATE OF COUNSEL

As Petitioner in proper person and as a member of the Bar of the Supreme Court of the United States, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

_____
Counsel and Petitioner